In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE TOWN OF REAL DE DOLORES del Oro, Hipolito Montoya, et al., appellants,
v.
THE UNITED STATES ET AL. } No. 132.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

On February 18, 1893, a petition was filed in the Court of Private Land Claims, alleged to be by the town of Real de Dolores del Oro, unincorporated, organized "in pursuance of the Republic of Mexico," and situate in the county of Santa Fe and Territory of New Mexico, and Guadalupe Montoya, against the United States of America and the New Mexico Mining Company as defendants, alleging substantially as follows (R., 1–3):

1. That in the year 1830 the then governor of New Mexico, under the government of the Republic of Mexico,

founded the town or village called Real de Dolores del Oro, according to the laws of Mexico then in force in said Territory.

2. That the said town or village continued in existence from the time of its foundation down to the cession of said territory to the United States, with the officers, power, and jurisdiction pertaining to a town or village under the Mexican Government, and prior to said date there were not less than forty residents of said town, including not less than twenty householders and heads of families, and a church had been erected and maintained in said town, and all of the requirements of the laws of the Republic of Mexico in relation thereto had been complied with, and the said town or village had been and was fully recognized by public authority, and was in existence as such at the date of said cession.

3. That by virtue of its creation and existence said town, in addition to what was allotted to its inhabitants in severalty, became and was entitled under the laws of Mexico to lands for the common use of the town and for late settlers who might lawfully take up their residence thereon, and in default of an actual grant of a larger quantity, was entitled by law to a tract, including the lands held in severalty, of four square leagues of land in a square form, with the church or the center of the town as the center of the tract, and extending therefrom one league to each of the cardinal points of the compass.

4. That there is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made.

5. That the said town was not incorporated, but the petitioner, Guadalupe Montoya, brought the petition on behalf of said town and of himself, and of all other owners of land within the boundaries of said tract, there being no municipal corporation within the limits of the said tract; that the said Guadalupe Montoya is the owner, by descent and purchase, of a part of the said tract of land embraced in the grant thereof to the said town, and is the successor in part to the rights and title of said original grantee.

6. That shortly after the acquisition of New Mexico by the United States the Real de Dolores del Oro ceased to exercise the powers and functions of a municipal government and ceased to elect the municipal officers who previously had administered its affairs.

7. That said land is all situated in the county of Santa Fe, N. Mex., and includes 4 square leagues, having the center of the said town, being the church situated therein, as the center thereof, and a map of the same was filed with the petition.

8. That the said tract of land is held and claimed by a large number of persons, including the petitioners, under the said grant, and it is not known that any of the possessors or claimants thereof are adverse to the petitioners, but they are informed that the New Mexico Mining Company claims some title or interest therein under and by virtue of an alleged private land grant, which, the petitioners allege, is subordinate to their title.

9. That, so far as is known to the petitioners, no claim for the said tract has ever been submitted to the authorities constituted by law for the determination of land

titles in the Territory of New Mexico, and no survey of the said tract has ever been made.

10. That no original documents constituting or creating the grant claimed are known to exist.

The eleventh paragraph of the petition states the claim of the petitioners to the said tract of land for 4 square leagues, as shown on the map they file, having for its center the center of the old Real de Dolores del Oro, being the church situated therein, and prays that the validity of the grant may be inquired into and decided by the court and the said grant confirmed to the said town or to the petitioner Guadalupe Montoya, in his own right and in trust for the benefit of the other owners of lands within its limits.

On April 16, 1895, an answer, in the nature of a general denial, was filed on behalf of the United States (R., 5).

On September 5, 1896, a motion requiring the petitioners to bring before the court as parties defendant certain adverse possessors and claimants to portions of the lands claimed under what was known as the San Antonio de las Huertas grant, then pending before the Court of Private Land Claims as cases Nos. 90 and 209, was filed by the United States (R., 6), and the order of the court was made accordingly (R., 6).

Thereafter, on April 2, 1897, thirty days after the announcement of the decision of this court in the case of the *United States* v. *The City of Santa Fe* (165 U. S., 675), the petitioners filed an amended petition (R., 7–10). It will be noted that each paragraph of this amended petition is identical with the paragraph numbered correspond-

ingly in the original petition, commencing with the first paragraph and including the eleventh, with the exception that in paragraph 8 thereof there is included the names of various adverse possessors and claimants required to be made parties to the suit by the order of the court of September 5, 1896 (R., 6). Not a single allegation or issue in the original petition was changed by the amended petition, although an additional paragraph, praying for the issue of process against the defendants, was added.

On May 17, 1897, the United States filed an amended answer (R., 10–13) to this amended petition, which, after traversing the petitioners' allegations as to the origin, existence, and right of the town, by virtue of its creation and existence, to the grant claimed, denied generally all the other allegations of the petition.

The answer further alleged that, even if said grant was made as claimed, the land claimed was and is entirely within the limits of a tract of land known as the Ortiz Mine grant, which, by virtue of the laws, usages, and customs, and mining ordinances of Mexico, was, on the 28th day of December, 1833, made to Jose Francisco Ortiz and Ignacio Cano; that the claim for which said land, so granted, consisting of sixteen square leagues of land, being two leagues in each of the four cardinal directions from the Santa Rosalia Mine, was presented by the successors in interest of said grantee to the surveyor-general of New Mexico, under the provisions of the eighth section of the act of Congress of June 27, 1854, for his approval, and that such proceedings were had before said surveyor-general; that afterwards, to wit, on November

24, 1860, said surveyor-general of New Mexico approved the said claim and transmitted the same to Congress, and recommended its confirmation, and that afterwards, to wit, under and by virtue of an act of Congress, approved March 1, 1861, entitled "An act to confirm a certain private land claim in the Territory of New Mexico," said Congress of the United States confirmed said claim as recommended for confirmation. That by virtue of such confirmation and letters of patent issued thereunder, the confirmee thereof acquired the interest of the United States in and to such land, including the land claimed by the petitioners, and that said action of Congress was and is conclusive and binding upon this court, according to the provisions of the act of Congress creating it; that therefore the United States has no interest in said property, and that said claim is not one which, under the Treaty of Guadalupe Hidalgo, the laws of nations, and the acts of Congress, is entitled to confirmation by this court.

Further answering, the United States said that even if any such grant was made as set forth in the petition, the land thereby attempted to be confirmed was, to the extent of about 2,000 acres, within the limits of a tract of land known as the Mesita to Juana Lopez grant, which was granted by the Spanish Government, on the 18th day of January, A. D. 1782, to Domingo Romero, Miguel Ortiz, and Manuel Ortiz, a claim for which said tract of land was presented by the heirs of said grantees to the surveyor-general of the Territory of New Mexico, and that such proceedings were had before said surveyor-general that afterwards, to wit, on November 29, 1872,

said surveyor-general approved said claim and transmitted the same to Congress, recommending its confirmation, and that afterwards, to wit, on January 29, 1879, said Congress confirmed said claim to the descendants of said original grantees. That therefore, for the same reasons stated in reference to the confirmed Ortiz Mine grant, the grant claimed by the petitioners, to the extent of said conflict with said Mosita de Juana Lopez grant, is not one which was entitled to confirmation by the court.

On the same day the petitioners filed their exceptions to this amended answer of the Government (R., 14), excepting to such part thereof as set forth that the land described in the petitioners' amended petition is within the limits of the tract of land known as the Ortiz Mine grant, confirmed by Congress and patented to the confirmees by the United States, and that by virtue of such confirmation and patent the right to said land was vested in the confirmees as against the petitioners, and that said action of Congress is conclusive and binding upon the court for the reasons set forth in said answer; and for grounds of their exceptions the petitioners stated that the said amended answer does not allege that the right of the petitioners to said land described in their amended petition has ever been lawfully acted upon or decided by Congress or under its authority, and that said amended answer in said matters so set forth is insufficient in law to constitute any defense to said petition.

It will be seen from the transcript of the trial (R., 15) that the foregoing exceptions to the answer of the Government were overruled by the court after the appearance of the additional defendants, claimants under the

Las Huertas grant (R., 14, 15). The court said in so doing:

> The COURT. Under any construction which we are able to put upon the amended petition, the claim of the plaintiffs was imperfect at the time the sovereignty and jurisdiction was acquired by tne United States over this country, and it appears by the answer that the Government has confirmed another grant and patented all of the lands that are included in this claim. Under this state of facts we could not confirm to the petitioner any portion of the lands, and the exceptions will be, therefore, overruled.
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> Mr. WARREN. The petitioners will stand upon the exceptions.
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> The COURT. And that will result in the dismissing of the petition. This is not a question of jurisdiction at all. We think we have jurisdiction of every claim here for an alleged grant.
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> Mr. CATRON. We want the record to show that Mr. Warren stands upon his exceptions, and does not desire to introduce any evidence or proceed further in the case.
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> Mr. WARREN. That there may be no misunderstanding, we stand upon the exceptions to the answer, and that the petition is dismissed.

It thus appears that counsel for claimants declined to introduce any evidence to sustain the allegations of the amended petition, and the Court of Private Land Claims, whatever opinion it may have entertained as to the truth of the allegations of the amended petition, was compelled to dismiss the same for want of any evidence in support thereof. This was done and the case appealed to this court.

At this point it is proper to state that it has been and is the unvaried practice of the Court of Private Land

Claims, and so announced at the beginning of the litigation before it, that demurrers and dilatory pleas would not be passed upon by it, but that such pleas could be made use of by way of answer or replication, for, as the court was limited in life, it became necessary that the entire case should be tried, all issues made up without decision, and then decided, thus disposing of at one time all questions arising under the pleading and testimony. The reason for this was obvious, for, if an issue were joined and decided on, a technical question of pleading, and an appeal taken to this court, which should hold the Court of Private Land Claims in error in sustaining such a plea and remand the case, the entire case would have to be tried, and possibly would not be returned to the Court of Private Land Claims before its legal demise, as the act creating it limited its life, and thus the claimant would be deprived of an opportunity of having his title fully heard. The adoption of this rule displayed at least a desire on the part of the Court of Private Land Claims to give claimants an opportunity to complete their records as to all issues of law and fact, thus avoiding a future contingency of the lapse of the court.

ARGUMENT.

I.

The Court of Private Land Claims was compelled to dismiss the claimants' petition, when they declined to introduce any evidence in support thereof.

> The court shall proceed to hear the cause on the petition and proofs, and render a final decree according to the provisions of this act, and in no case shall

> a decree be entered otherwise than upon full legal proof and hearing; and in every case the court shall require the petition to be sustained by satisfactory proofs, whether an answer or plea shall have been filed or not.
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> Section 6, paragraph third, act 1891 (26 Stats. Large, 854).

The Court of Private Land Claims did not, in the record or in any statement *de hors* the record, say or hold that the plaintiffs would be precluded from introducing any evidence tending to support their claim or establish their alleged rights to the land or any part thereof, either under a perfect or imperfect grant, nor did it hold or suggest, as counsel gratuitously assumed in his brief (page 7), "that only an equitable claim is alleged or could have been proven under the pleadings." The court did say that on the face of the petition the claim was an imperfect one, and that the exceptions to the answer of the Government were not well-founded, because, as the case then stood on the pleadings, the prior disposition of the land by Congress, under the confirmation to the New Mexico Mining Company of the Ortiz grant, had passed to the New Mexico Mining Company the legal title to the property, and therefore the United States could not confirm and transfer the title to the same land to the claimants, for it had already disposed of the same; therefore, the answer of the Government was responsive to the allegations of the petition.

In no manner and at no time did the court say or intimate that the claimants would be limited in their evidence to proof of an imperfect or perfect grant if they

could do so. Such a statement as counsel makes is entirely voluntary.

The proper course of claimants, after excepting to the court's decision overruling their exceptions, was to have gone to trial and introduced their testimony, instead of haughtily declining to do so, and then the court could have passed upon the whole case, both as to questions of law and fact. Were the claimants still unsatisfied they had their remedy of appeal.

II.

It is believed by counsel for the Government that claimants declined to introduce any evidence because of the decision of this court in what is known as the Santa Fe Case, and relied upon his dilatory motion, in pursuance of a desire to keep the title to the claim *sub judice*, not only as to the United States, but as to the New Mexico Mining Company.

When the Court of Private Land Claims intimated that the pleadings disclosed an imperfect claim, it is insisted, in view of the decision of this court in the *Santa Fe Case* (165 U. S., 675), that it gave to the allegations in the petition a more liberal and charitable construction than they were entitled to, for, the petition and amended petition in the Santa Fe Case and the petition and amended petition in this case were all drafted upon the same theory, and the allegation in each of the same is, in almost identical language, that by virtue of the establishment and official recognition of the town or villa it became entitled by operation of law to four square leagues

of land, with the center of the town or villa as the center of the grant.

Without discussing the fallacy of the theory upon which these cases were presented to the Court of Private Land Claims, this court has settled every question presented by the petition in this case against the jurisdiction of the Court of Private Land Claims over the same.

> Although the act of 1891, in section 11, authorized a town presenting a claim for a grant to represent the claims of lot holders to lots within the town, this provision does not override the general requirements of the statute as to the nature of the claim to title which the court is authorized to confirm. The difference between the act of 1891 and the California act of 1851, hitherto referred to, accentuates the intention of Congress to confine the authority conferred by the later act to narrower limits than those fixed by the act of 1851. The act of 1851 authorized the adjudication of claims to land by virtue of any "right" or "title" derived from the Spanish Government, and conferred the power in express language on the board and court to presume a grant in favor of a town. The act of 1891 not only entirely omits authority to invoke this presumption, but, as we have seen, excludes by express terms any claim the completion of which depended upon the mere grace or favor of the Government of Spain or Mexico, and of the United States as the successor to the rights of those Governments. (*U. S.* v. *Santa Fe*, 165 U. S., 675.)

If, however, claimants could possibly bring their claim within any character of a grant authorized by the act of 1891 to be confirmed, they were in no way precluded from

doing so, although, on the face of their petition, as in the Santa Fe case, no such claim is alleged as would give the court jurisdiction. But no doubt realizing that the alleged establishment of the town of Real de Dolores del Oro, as late as 1830, within 30 miles of the capital of New Mexico and only about three years prior to the grant of the Ortiz Mine to Ortiz and Cano, would be the subject of thorough investigation by means of records and the testimony of witnesses still living, they declined to attempt to sustain the allegations of their petition, because, forsooth, it was impossible.

III.

Some stress seems to be laid by counsel in his brief on the fact that his petition and amended petition contained the allegation that

> There is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made.
> Original petition, paragraph 4 (R., 2).
> Amended petition, paragraph 4 (R., 8).

A similiar allegation was contained in the original petition in the Santa Fe Case, although it was modified by the qualified averment that "all the muniments of title of such municipal grant, if any such existed, were utterly destroyed by the hostile Indians engaged in such insurrection." It will be noted that the allegations in the case at bar, as to the existence of an express grant, are purely inferential, and in neither of these cases was it believed or expected that even an attempt would have to be made to prove an express grant to any quantity of

land, but they were instituted and tried upon the presumptive idea of a grant of four square leagues by operation of law.

The facts concerning the alleged creation, settlement, occupation, and recognition of this town in 1830 should have been established by the claimant, if such a thing were possible, in a consistent endeavor to sustain the allegations of his petition. If any allotments under the town, either by virtue of direct grant by the city or under its authority, or any occupation thereunder, either by the 40 settlers or 20 heads of families, could have been proven, the allegations thereof should not be based on the imagination of the pleader who drafted the petition.

The real petitioner in this case, Guadalupe Montoya, seeks to have the entire grant or claim confirmed to him "in trust for the benefit of all owners of land within its limits." The presumption of Montoya, under the peculiar circumstances disclosed by the record, in seeking to substitute himself as voluntary trustee for others who are as capable of suing as he is, is only equaled by his temerity in appealing the case to this court upon a record showing that he declined to even undertake to sustain the allegations of his petition, or attempt to establish an imperfect grant or even an inchoate right.

Counsel suggests in his brief (p. 7) that "the amended petition was not demurred to."

As stated before, it has been the practice of the Government's counsel, in view of his early experience with the court in relation to demurrers and technical dilatory pleas, to raise all questions of law and fact by way of answer, in accordance with the court's intimation that

this course would better expedite the litigation within the life of the court. But the failure to demur to the original or amended petition in no wise amounts to an acknowledgment that the allegations thereof are sufficient to give the court jurisdiction of the subject-matter. It was the duty of claimant's counsel, if he desired to have such a judgment entered as he might show his client entitled to under the evidence, to have proceeded with his case, introduced his evidence, and made up his record; then, perhaps, he might have amended his petition to conform to his proof, if he had any, as to the origin, occupation, and recognition of the town, or of allotments of lands thereunder, in 1830 or at any other time.

V.

Counsel states in his brief (p. 7):

> The court below erred in holding that the petitioners could not maintain their action, for the reason stated.
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> The act of Congress, approved March 1, 1861, confirming the Ortiz Mine grant, and the patent issued thereunder to the New Mexico Mining Company, which included the grant claimed by these petitioners, pleaded in paragraph 5 of the answer, did not prevent these claimants from maintaining their action, and from recovery of judgment therein against the United States, upon sufficient proofs.

As frequently stated, the court did not decline to permit the claimants to attempt to sustain their title or maintain their action, but, on the contrary, it held that on the face of the pleadings the grant was an imperfect one, which, under the Santa Fe decision, was only

an inchoate right, if any at all, and one which could not be recognized under the act creating the Court of Private Land Claims. It did hold, however, that if he sustained the allegations of his petition as to an imperfect title, the land had been disposed of by the United States to others when it held the legal title, and therefore the claim did not come within the purview of a decree of the court for the reason that the confirmation sought could vest nothing.

It is complained that an express provision is made for such proceeding and money judgment by section 14 of the act of March 3, 1891, and that the Court of Private Land Claims is vested with jurisdiction for that purpose. The Court of Private Land Claims is, beyond doubt, vested with jurisdiction for that purpose, and it has never declined to exercise it in any case coming within the provisions of this section and upon allegations in the petition seeking to obtain such money judgment in the event that the Government had wrongfully disposed of any of the lands.

This question, however, has been fully considered in the Government's brief in case No. 86, *U. S.* v. *Conway*, which is to be argued with this case.

Had the Court of Private Land Claims held the title in this case to have been an imperfect one, which, however, would not have been in accord with the decision of this court in the Santa Fe case, it was not empowered to give to the town of Dolores a confirmation for 4 square leagues, for, under the various decisions of this court, the prior confirmation by Congress was the valid

title to the land, although the claim upon which such confirmation had been based was junior in time and in right to that of the present claimant.

For all these reasons, it is confidently submitted that the judgment of the Court of Private Land Claims should be affirmed.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

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